



House of Representatives

File No. 849

General Assembly

January Session, 2001

(Reprint of File No. 15)

Substitute House Bill No. 5925
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
June 1, 2001

**AN ACT CONCERNING THE CONNECTICUT UNIFORM ELECTRONIC
TRANSACTIONS ACT.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. (NEW) Sections 1 to 22, inclusive, of this act shall be
2 known and may be cited as the Connecticut Uniform Electronic
3 Transactions Act.

4 Sec. 2. (NEW) As used in sections 1 to 22, inclusive, of this act:

5 (1) "Agreement" means the bargain of the parties in fact, as found in
6 their language or inferred from other circumstances and from rules,
7 regulations, and procedures given the effect of agreements under laws
8 otherwise applicable to a particular transaction.

9 (2) "Automated transaction" means a transaction conducted or
10 performed, in whole or in part, by electronic means or electronic
11 records, in which the acts or records of one or both parties are not
12 reviewed by an individual in the ordinary course in forming a
13 contract, performing under an existing contract or fulfilling an

14 obligation required by the transaction.

15 (3) "Computer program" means a set of statements or instructions to
16 be used directly or indirectly in an information processing system in
17 order to bring about a certain result.

18 (4) "Contract" means the total legal obligation resulting from the
19 parties' agreement as affected by sections 1 to 22, inclusive, of this act
20 and other applicable law.

21 (5) "Electronic" means relating to technology having electrical,
22 digital, magnetic, wireless, optical, electromagnetic or similar
23 capabilities.

24 (6) "Electronic agent" means a computer program or an electronic or
25 other automated means used independently to initiate an action or
26 respond to electronic records or performances in whole or in part,
27 without review or action by an individual.

28 (7) "Electronic record" means a record created, generated, sent,
29 communicated, received or stored by electronic means. Examples of
30 such electronic records include, without limitation, facsimiles,
31 electronic mail, telexes and Internet messaging.

32 (8) "Electronic signature" means an electronic sound, symbol, or
33 process attached to or logically associated with a record and executed
34 or adopted by a person with the intent to sign the record.

35 (9) "Governmental agency" means an executive, legislative, or
36 judicial agency, department, board, commission, authority, institution,
37 or instrumentality of a state or of a county, municipality, or other
38 political subdivision of a state.

39 (10) "Information" means data, text, images, sounds, codes,
40 computer programs, software, databases or the like.

41 (11) "Information processing system" means an electronic system for
42 creating, generating, sending, receiving, storing, displaying or

43 processing information.

44 (12) "Person" has the same meaning as "person", as defined in
45 subsection (k) of section 1-1 of the general statutes.

46 (13) "Record" means information that is inscribed on a tangible
47 medium or that is stored in an electronic or other medium and is
48 retrievable in perceivable form.

49 (14) "Security procedure" means a procedure employed for the
50 purpose of verifying that an electronic signature, record or
51 performance is that of a specific person or for detecting changes or
52 errors in the information in an electronic record. The term includes a
53 procedure that requires the use of algorithms or other codes,
54 identifying words or numbers, encryption, or callback or other
55 acknowledgment procedures.

56 (15) "State" means a state of the United States, the District of
57 Columbia, Puerto Rico, the United States Virgin Islands, or any
58 territory or insular possession subject to the jurisdiction of the United
59 States. The term includes an Indian tribe or band, or Alaskan native
60 village, which is recognized by federal law or formally acknowledged
61 by a state.

62 (16) "Transaction" means an action or set of actions occurring
63 between two or more persons relating to the conduct of business,
64 consumer, commercial, charitable or governmental affairs.

65 Sec. 3. (NEW) (a) Except as otherwise provided in subsection (b) or
66 (c) of this section, sections 1 to 22, inclusive, of this act apply to
67 electronic records and electronic signatures relating to a transaction.

68 (b) Sections 1 to 22, inclusive, of this act do not apply to a
69 transaction to the extent it is governed by:

70 (1) A law governing the creation and execution of wills, codicils or
71 testamentary trusts;

72 (2) Except to the extent provided in section 16 of this act, the
73 Connecticut Uniform Commercial Code, other than sections 42a-1-107
74 and 42a-1-206 of the general statutes, and article 2 of title 42a of the
75 general statutes;

76 (3) Sections 47-10, 47-12, 47-12a, 47-14g, 47-14j, 47-14k, 47-15, 47-16,
77 47-17, 47-18a and 47-19 of the general statutes;

78 (c) Sections 1 to 22, inclusive, of this act do not apply to any of the
79 following:

80 (1) Rules of court practice and procedure under the Connecticut
81 Practice Book;

82 (2) Any notice of:

83 (A) The cancellation or termination of utility services, including
84 water, heat, gas, cable, oil, telephone and electric power;

85 (B) Default, acceleration, repossession, foreclosure or eviction, or
86 the right to cure, under a credit agreement secured by, or a rental
87 agreement for, a primary residence of an individual;

88 (C) The cancellation or termination of health insurance or benefits or
89 life insurance benefits, excluding annuities; or

90 (D) Recall of a product, or material failure of a product, that risks
91 endangering health or safety;

92 (3) Any document required to accompany any transportation or
93 handling of hazardous materials, pesticides or other toxic or
94 dangerous materials.

95 (d) Sections 1 to 22, inclusive, of this act apply to an electronic
96 record or electronic signature otherwise excluded from the application
97 of sections 1 to 22, inclusive, of this act under subsection (b) or (c) of
98 this section to the extent it is governed by a law other than those
99 specified in said subsection (b) or (c).

100 (e) A transaction subject to sections 1 to 22, inclusive, of this act is
101 also subject to other applicable substantive law.

102 Sec. 4. (NEW) Sections 1 to 22, inclusive, of this act apply to any
103 electronic record or electronic signature created, generated, sent,
104 communicated, received or stored on or after the effective date of this
105 act.

106 Sec. 5. (NEW) (a) Sections 1 to 22, inclusive, of this act do not require
107 a record or signature to be created, generated, sent, communicated,
108 received, stored or otherwise processed or used by electronic means or
109 in electronic form.

110 (b) Sections 1 to 22, inclusive, of this act apply only to transactions
111 between parties each of which has agreed to conduct transactions by
112 electronic means. Whether the parties agree to conduct a transaction
113 by electronic means is determined from the context and surrounding
114 circumstances, including the parties' conduct.

115 (c) A party that agrees to conduct a transaction by electronic means
116 may refuse to conduct other transactions by electronic means. The
117 right granted by this subsection may not be waived by agreement.

118 (d) Except as otherwise provided in sections 1 to 22, inclusive, of
119 this act, the effect of any of its provisions may be varied by agreement.
120 The presence in certain provisions of sections 1 to 22, inclusive, of this
121 act of the words "unless otherwise agreed", or words of similar import,
122 does not imply that the effect of other provisions may not be varied by
123 agreement.

124 (e) Whether an electronic record or electronic signature has legal
125 consequences is determined by sections 1 to 22, inclusive, of this act
126 and other applicable law.

127 Sec. 6. (NEW) Sections 1 to 22, inclusive, of this act shall be
128 construed and applied:

129 (1) To facilitate electronic transactions consistent with other

130 applicable law;

131 (2) To be consistent with reasonable practices concerning electronic
132 transactions and with the continued expansion of those practices; and

133 (3) To effectuate their general purpose to make uniform the law
134 with respect to the subject of sections 1 to 22, inclusive, of this act
135 among states enacting it.

136 Sec. 7. (NEW) (a) A record or signature may not be denied legal
137 effect or enforceability solely because it is in electronic form.

138 (b) A contract may not be denied legal effect or enforceability solely
139 because an electronic record was used in its formation.

140 (c) If a law requires a record to be in writing, an electronic record
141 satisfies the law.

142 (d) If a law requires a signature, an electronic signature satisfies the
143 law.

144 Sec. 8. (NEW) (a) If parties have agreed to conduct a transaction by
145 electronic means and a law requires a person to provide, send or
146 deliver information in writing to another person, the requirement is
147 satisfied if the information is provided, sent or delivered, as the case
148 may be, in an electronic record capable of retention by the recipient at
149 the time of receipt. An electronic record is not capable of retention by
150 the recipient if the sender or its information processing system inhibits
151 the ability of the recipient to print or store the electronic record.

152 (b) If a law other than sections 1 to 22, inclusive, of this act requires
153 a record (1) to be posted or displayed in a certain manner, (2) to be
154 sent, communicated or transmitted by a specified method, or (3) to
155 contain information that is formatted in a certain manner, the
156 following rules apply:

157 (A) The record shall be posted or displayed in the manner specified
158 in the other law.

159 (B) Except as otherwise provided in subdivision (2) of subsection (d)
160 of this section, the record shall be sent, communicated or transmitted
161 by the method specified in the other law.

162 (C) The record shall contain the information formatted in the
163 manner specified in the other law.

164 (c) If a sender inhibits the ability of a recipient to store or print an
165 electronic record, the electronic record is not enforceable against the
166 recipient.

167 (d) The requirements of this section may not be varied by
168 agreement, except that:

169 (1) To the extent a law other than sections 1 to 22, inclusive, of this
170 act requires information to be provided, sent or delivered in writing
171 but permits said requirement to be varied by agreement, the
172 requirement under subsection (a) of this section that the information
173 be in the form of an electronic record capable of retention may also be
174 varied by agreement; and

175 (2) A requirement under a law other than sections 1 to 22, inclusive,
176 of this act to send, communicate or transmit a record by a specified
177 means of delivery may be varied by agreement to the extent permitted
178 by the other law.

179 Sec. 9. (NEW) (a) An electronic record or electronic signature is
180 attributable to a person if it was the act of the person. The act of the
181 person may be shown in any manner, including a showing of the
182 efficacy of any security procedure applied to determine the person to
183 which the electronic record or electronic signature was attributable.

184 (b) The effect of an electronic record or electronic signature
185 attributed to a person under subsection (a) of this section is
186 determined from the context and surrounding circumstances at the
187 time of its creation, execution or adoption, including the parties'
188 agreement, if any, and otherwise as provided by law.

189 Sec. 10. (NEW) If a change or error in an electronic record occurs in
190 a transmission between parties to a transaction, the following rules
191 apply:

192 (1) If the parties have agreed to use a security procedure to detect
193 changes or errors and one party has conformed to the procedure, but
194 the other party has not, and the nonconforming party would have
195 detected the change or error had that party also conformed, the
196 conforming party may avoid the effect of the changed or erroneous
197 electronic record.

198 (2) In an automated transaction involving an individual, the
199 individual may avoid the effect of an electronic record that resulted
200 from an error made by the individual in dealing with the electronic
201 agent of another person if the electronic agent did not provide an
202 opportunity for the prevention or correction of the error and, at the
203 time the individual learns of the error, the individual:

204 (A) Promptly notifies the other person of the error and that the
205 individual did not intend to be bound by the electronic record received
206 by the other person;

207 (B) Takes reasonable steps, including steps that conform to the other
208 person's reasonable instructions, to return to the other person or, if
209 instructed by the other person, to destroy the consideration received, if
210 any, as a result of the erroneous electronic record; and

211 (C) Has not used or received any benefit or value from the
212 consideration, if any, received from the other person.

213 (3) If neither subdivision (1) nor (2) of this section applies, the
214 change or error shall have the effect provided by other law, including
215 the law of mistake, and the parties' contract, if any.

216 (4) Subdivisions (2) and (3) of this section may not be varied by
217 agreement.

218 Sec. 11. (NEW) If a law requires a signature or record to be

219 notarized, acknowledged, verified or made under oath, the
220 requirement is satisfied if the electronic signature of the person
221 authorized to perform said acts, together with all other information
222 required to be included by other applicable law, is attached to or
223 logically associated with the signature or record.

224 Sec. 12. (NEW) (a) If a law requires that a record be retained, the
225 requirement is satisfied by retaining an electronic record of the
226 information in the record which:

227 (1) Accurately reflects the information set forth in the record after it
228 was first generated in its final form as an electronic record or
229 otherwise; and

230 (2) Remains accessible for later reference.

231 (b) A requirement to retain a record in accordance with subsection
232 (a) of this section does not apply to any information the sole purpose
233 of which is to enable the record to be sent, communicated or received.

234 (c) A person may satisfy subsection (a) of this section by using the
235 services of another person if the requirements of that subsection are
236 satisfied.

237 (d) If a law requires a record to be presented or retained in its
238 original form, or provides consequences if the record is not presented
239 or retained in its original form, that law is satisfied by an electronic
240 record retained in accordance with subsection (a) of this section.

241 (e) If a law requires retention of a check, that requirement is
242 satisfied by retention of an electronic record of the information on the
243 front and back of the check in accordance with subsection (a) of this
244 section.

245 (f) A record retained as an electronic record in accordance with
246 subsection (a) of this section satisfies a law requiring a person to retain
247 a record for evidentiary, audit or like purposes, unless a law enacted
248 after the effective date of this section specifically prohibits the use of an

249 electronic record for the specified purpose.

250 (g) This section does not preclude a governmental agency in this
251 state from specifying additional requirements for the retention of a
252 record subject to the agency's jurisdiction.

253 Sec. 13. (NEW) In a proceeding, evidence of a record or signature
254 may not be excluded solely because it is in electronic form.

255 Sec. 14. (NEW) In an automated transaction, the following rules
256 apply:

257 (1) A contract may be formed by the interaction of electronic agents
258 of the parties, even if no individual was aware of or reviewed the
259 electronic agents' actions or the resulting terms and agreements.

260 (2) A contract may be formed by the interaction of an electronic
261 agent and an individual, acting on the individual's own behalf or for
262 another person, including by an interaction in which the individual
263 performs actions that the individual is free to refuse to perform and
264 which the individual knows or has reason to know will cause the
265 electronic agent to complete the transaction or performance.

266 (3) The terms of the contract are determined by the substantive law
267 applicable to it.

268 Sec. 15. (NEW) (a) Unless otherwise agreed between the sender and
269 the recipient, an electronic record is sent when it:

270 (1) Is addressed properly or otherwise directed properly to an
271 information processing system that the recipient has designated or
272 uses for the purpose of receiving electronic records or information of
273 the type sent and from which the recipient is able to retrieve the
274 electronic record;

275 (2) Is in a form capable of being processed by that system; and

276 (3) Enters an information processing system outside the control of

277 the sender or of a person that sent the electronic record on behalf of the
278 sender or enters a region of the information processing system
279 designated or used by the recipient which is under the control of the
280 recipient.

281 (b) Unless otherwise agreed between a sender and the recipient, an
282 electronic record is received when:

283 (1) It enters an information processing system that the recipient has
284 designated or uses for the purpose of receiving electronic records or
285 information of the type sent and from which the recipient is able to
286 retrieve the electronic record; and

287 (2) It is in a form capable of being processed by that system.

288 (c) Subsection (b) of this section applies even if the place the
289 information processing system is located is different from the place the
290 electronic record is deemed to be received under subsection (d) of this
291 section.

292 (d) Unless otherwise expressly provided in the electronic record or
293 agreed between the sender and the recipient, an electronic record is
294 deemed to be sent from the sender's place of business and to be
295 received at the recipient's place of business. For purposes of this
296 subsection, the following rules apply:

297 (1) If the sender or recipient has more than one place of business, the
298 place of business of that person is the place having the closest
299 relationship to the underlying transaction.

300 (2) If the sender or the recipient does not have a place of business,
301 the place of business is the sender's or recipient's residence, as the case
302 may be.

303 (e) An electronic record is received under subsection (b) of this
304 section even if no individual is aware of its receipt.

305 (f) Receipt of an electronic acknowledgment from an information

306 processing system described in subsection (b) of this section
307 establishes that a record was received but, by itself, does not establish
308 that the content sent corresponds to the content received.

309 (g) If a person is aware that an electronic record purportedly sent
310 under subsection (a) of this section, or purportedly received under
311 subsection (b) of this section, was not actually sent or received, the
312 legal effect of the sending or receipt is determined by other applicable
313 law. Except to the extent permitted by the other law, the requirements
314 of this subsection may not be varied by agreement.

315 Sec. 16. (NEW) (a) As used in this section, "transferable record"
316 means an electronic record that:

317 (1) Would be a note under article 3 of title 42a of the general
318 statutes, or other similar law, or a document under article 7 of title 42a
319 of the general statutes, or other similar law, if the electronic record
320 were in writing; and

321 (2) The issuer of the electronic record expressly has agreed is a
322 transferable record.

323 (b) A person has control of a transferable record if a system
324 employed for evidencing the transfer of interests in the transferable
325 record reliably establishes that person as the person to which the
326 transferable record was issued or transferred.

327 (c) A system satisfies subsection (b) of this section, and a person is
328 deemed to have control of a transferable record, if the transferable
329 record is created, stored and assigned in such a manner that:

330 (1) A single authoritative copy of the transferable record exists
331 which is unique, identifiable, and, except as otherwise provided in
332 subdivisions (4), (5) and (6) of this subsection, unalterable;

333 (2) The authoritative copy identifies the person asserting control as:

334 (A) The person to which the transferable record was issued; or

335 (B) If the authoritative copy indicates that the transferable record
336 has been transferred, the person to which the transferable record was
337 most recently transferred;

338 (3) The authoritative copy is communicated to and maintained by
339 the person asserting control or its designated custodian;

340 (4) Copies or revisions that add or change an identified assignee of
341 the authoritative copy can be made only with the consent of the person
342 asserting control;

343 (5) Each copy of the authoritative copy and any copy of a copy is
344 readily identifiable as a copy that is not the authoritative copy; and

345 (6) Any revision of the authoritative copy is readily identifiable as
346 authorized or unauthorized.

347 (d) Except as otherwise agreed, a person having control of a
348 transferable record is the holder, as defined in subdivision (20) of
349 section 42a-1-201 of the general statutes, or other similar law, of the
350 transferable record and has the same rights and defenses as a holder of
351 an equivalent record or writing under the Connecticut Uniform
352 Commercial Code, or other similar law, including, if the applicable
353 statutory requirements under subsection (a) of section 42a-3-302 or
354 section 42a-7-501 or 42a-9-308 of the general statutes, or other similar
355 law, are satisfied, the rights and defenses of a holder in due course, a
356 holder to which a negotiable document of title has been duly
357 negotiated, or a purchaser, respectively. Delivery, possession, and
358 endorsement are not required to obtain or exercise any of the rights
359 under this subsection.

360 (e) Except as otherwise agreed, an obligor under a transferable
361 record has the same rights and defenses as an equivalent obligor under
362 equivalent records or writings under the Connecticut Uniform
363 Commercial Code, or other similar law.

364 (f) If requested by a person against which enforcement is sought, the

365 person seeking to enforce the transferable record shall provide
366 reasonable proof that the person is in control of the transferable record.
367 Proof may include access to the authoritative copy of the transferable
368 record and related business records sufficient to review the terms of
369 the transferable record and to establish the identity of the person
370 having control of the transferable record.

371 Sec. 17. (NEW) Each governmental agency in this state shall
372 determine whether, and the extent to which, it will create and retain
373 electronic records and convert written records to electronic records.

374 Sec. 18. (NEW) (a) Except as otherwise provided in subsection (f) of
375 section 12 of this act, each governmental agency in this state shall
376 determine whether, and the extent to which, it will send and accept
377 electronic records and electronic signatures to and from other persons
378 and otherwise create, generate, communicate, store, process, use and
379 rely upon electronic records and electronic signatures.

380 (b) To the extent that a state of Connecticut executive branch
381 governmental agency uses electronic records and electronic signatures
382 under subsection (a) of this section, the Department of Information
383 Technology, giving due consideration to security, may adopt
384 regulations, in accordance with the provisions of chapter 54,
385 specifying:

386 (1) The manner and format in which the electronic records shall be
387 created, generated, sent, communicated, received, and stored and the
388 systems established for those purposes;

389 (2) If electronic records shall be signed by electronic means, the type
390 of electronic signature required, the manner and format in which the
391 electronic signature shall be affixed to the electronic record, and the
392 identity of, or criteria that shall be met by, any third party used by a
393 person filing a document to facilitate the process;

394 (3) Control processes and procedures as appropriate to ensure
395 adequate preservation, disposition, integrity, security, confidentiality

396 and auditability of electronic records; and

397 (4) Any other required attributes for electronic records which are
398 specified for corresponding nonelectronic records or reasonably
399 necessary under the circumstances.

400 (c) The regulations which the Department of Information
401 Technology may adopt pursuant to subsection (b) of this section may
402 encourage and promote consistency and interoperability with similar
403 requirements adopted by governmental agencies of other states and
404 the federal government and nongovernmental persons interacting with
405 governmental agencies of this state. If appropriate, said regulations
406 may specify differing levels of standards from which governmental
407 agencies of this state may choose in implementing the most
408 appropriate standard for a particular application.

409 (d) The regulations which the Department of Information
410 Technology may adopt pursuant to subsection (b) of this section shall
411 not apply to the office of the State Treasurer, State Comptroller,
412 Secretary of the State or Attorney General. Each said office may adopt
413 regulations, in accordance with the provisions of chapter 54 of the
414 general statutes, to carry out the purposes of the regulations adopted
415 pursuant to said subsection (b) with regard to said office.

416 (e) Except as otherwise provided in subsection (f) of section 12 of
417 this act, sections 1 to 22, inclusive, of this act do not require a
418 governmental agency in this state to use or permit the use of electronic
419 records or electronic signatures.

420 Sec. 19. (NEW) (a) For purposes of this section and section 20 of this
421 act, "consumer" means an individual who obtains, through a
422 transaction, products or services that are used primarily for personal,
423 family or household purposes, and also means the legal representative
424 of such an individual.

425 (b) Notwithstanding the provisions of section 7 of this act, if a
426 statute, regulation, or other rule of law requires that information

427 relating to a transaction or transactions be provided or made available
428 to a consumer in writing, the use of an electronic record to provide or
429 make available, whichever is required, such information satisfies the
430 requirement that such information be in writing if the requirements of
431 subdivisions (1) to (6), inclusive, of subsection (c) of section 101 of the
432 Electronic Signatures in Global and National Commerce Act, P.L. 106-
433 226, 114 Stat. 464 (2000), as amended, are met. This section may not be
434 varied by agreement.

435 Sec. 20. (NEW) (a) When a consumer is required to provide notice to
436 exercise or preserve the consumer's rights under any law, the
437 consumer may exercise or preserve that right in the same manner in
438 which the consumer was provided with notice of that right.

439 (b) Notwithstanding the provisions of section 15 of this act, in a
440 consumer transaction, an electronic record is not sent to or received by
441 the consumer if the sender is aware that the consumer did not actually
442 receive the electronic record or did not actually receive the electronic
443 record in a manner allowing the record to be opened and read by the
444 consumer.

445 (c) A transaction entered into by a consumer electronically is
446 entered into at the consumer's place of residence.

447 (d) The provisions of this section may not be waived or varied by
448 agreement.

449 Sec. 21. (NEW) If any provision of sections 1 to 22, inclusive, of this
450 act or its application to any person or circumstance is held invalid or
451 inconsistent with the Electronic Signatures in Global and National
452 Commerce Act, P.L. 106-229, 114 Stat. 464 (2000), the invalidity or
453 inconsistency does not affect other provisions or applications of
454 sections 1 to 22, inclusive, of this act which can be given effect without
455 the invalid or inconsistent provision or application, and to this end the
456 provisions of sections 1 to 22, inclusive, of this act are severable.

457 Sec. 22. (NEW) The provisions of sections 1 to 22, inclusive, of this

458 act governing the legal effect, validity, or enforceability of electronic
459 records or signatures, and of contracts formed or performed with the
460 use of such records or signatures conform to the requirements of
461 Section 102 of the Electronic Signatures in Global and National
462 Commerce Act, P.L. 106-229, 114 Stat. 464 (2000), and supersede,
463 modify and limit said federal act as provided in said Section 102.

464 Sec. 23. Sections 1-260 to 1-265, inclusive, of the general statutes are
465 repealed.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Minimal Cost

Affected Agencies: Various, Department of Information Technology

Municipal Impact: None

Explanation

State Impact:

The bill as amended, which establishes a legal foundation for the use of electronic communications in transactions where private parties have agreed to conduct business electronically, has no fiscal impact on the state. The bill as amended permits, but does not require state or local governmental agencies to use electronic records or signatures. It is anticipated that state agencies and municipalities would select to use electronic records and signatures only to the extent that existing equipment and staff resources are available to support the use of these electronic communications.

The bill as amended allows the Department of Information Technology (DOIT) to adopt regulations on the use of electronic records and electronic signatures by the state's executive branch agencies. (Their regulations would not apply to the State Treasurer, the State Comptroller, the Secretary of the State, and the Attorney General.) DOIT has already devoted a significant effort by participating in studies and drafting proposed legislation on uniform

electronic transactions, so their potential drafting of regulations would result in a minimal workload increase and in minimal costs that could be absorbed within existing appropriations.

House "A" makes a variety of changes which results in no fiscal impact.

OLR Amended Bill Analysis

sHB 5925 (as amended by House "A")*

**AN ACT CONCERNING THE CONNECTICUT UNIFORM
ELECTRONIC TRANSACTIONS ACT.****SUMMARY:**

This bill establishes as state law a version of the Uniform Electronic Transaction Act (UETA), which the National Conference of Commissioners on Uniform State Laws adopted on July 29, 1999. UETA provides uniform rules governing electronic commerce transactions. Currently, 22 states have adopted some version of it.

The bill, referred to as "CUETA," establishes a legal foundation for the use of electronic communications in transactions where the parties have agreed to conduct business electronically. It validates the use of electronic records and signatures and places electronic commerce and paper-based commerce on the same legal footing. An "electronic record" is one created, generated, sent, communicated, received, or stored by electronic means. E-mails, faxes, and Internet messaging are examples of electronic records. "Electronic signatures" are electronic sounds, symbols, or processes that people attach to or logically associate with a record to indicate their signature.

The major difference between UETA and CUETA is that CUETA provides consumer protections that are absent in the uniform law.

The bill supersedes and repeals the electronic records and signature law enacted in 1999.

*House Amendment "A" (1) removes federal government agencies from the application of the bill's provisions on governmental records and (2) makes a technical change by removing all references in the original bill to the Uniform Commercial Code and changing them to the appropriate sections of the state statutes.

EFFECTIVE DATE: October 1, 2001

PURPOSE OF CUETA (§ 6)

The bill requires that its provisions: (1) be interpreted and applied to facilitate electronic transactions consistent with other applicable laws, (2) be consistent with reasonable electronic transaction practices and with continued practice expansions, and (3) make electronic transaction laws uniform among the states enacting "it." (The last requirement appears to refer to UETA rather than CUETA since no other state is adopting CUETA).

SCOPE (§§ 2 - 5)

The bill governs transactions in electronic commerce when parties have agreed to transact business electronically. Parties have a right to refuse to transact business electronically.

Except where it provides otherwise, the bill establishes default rules that apply unless the parties to a transaction provide otherwise.

The bill applies to electronic records and signatures created, generated, sent, communicated, received, or stored on and after October 1, 2001. "Transaction" means an action or set of actions involving two or more people relating to business, consumer, commercial, charitable, or governmental affairs.

Transactions covered under the bill are subject to other applicable substantive law.

The bill does not apply to:

1. wills, codicils, or testamentary trusts if other laws apply;
2. transactions covered by the state's Uniform Commercial Code (UCC), except the rights of parties after a breach of contract, the statute of frauds, and sales;
3. most land transactions;
4. court practices and procedures in the Connecticut Practice Book;
5. utility termination notices, including water, gas, cable, electric, heat, oil, and telephone services;

6. notice that health or health insurance benefits or life insurance are being cancelled or terminated, other than with respect to annuities;
7. recall notices of products that could endanger health or safety;
8. notice of the material failure of products that could endanger health or safety;
9. notice of eviction, foreclosure, repossession, acceleration, default, or the right to cure, under a rental or credit agreement secured by someone's primary residence; or
10. documents required in transporting or handling hazardous materials, pesticides, or other toxic or dangerous materials.

Determining Scope

The context of the agreement and the surrounding circumstances, including the parties' conduct, are the determining factors when the parties' agreement to conduct a transaction electronically is at issue.

LEGAL RECOGNITION OF ELECTRONIC RECORDS, SIGNATURES, AND CONTRACTS (§§ 7, 5 (d) and (e), and 13)

The bill:

1. prohibits a record or signature from being denied legal effect or enforceability solely because it is in electronic form,
2. prohibits a contract from being denied legal effect or enforceability solely because an electronic record was used in its formation,
3. specifies that an electronic record satisfies a law that requires a record to be in writing,
4. specifies that an electronic signature satisfies a law that requires a signature, and
5. prohibits electronic records from being denied admissibility into evidence solely because they are electronic.

The bill and other applicable law determine whether an electronic record or signature has legal consequences. Unless the bill states otherwise, parties to a transaction may vary the effect of its provisions.

PROVIDING ELECTRONIC INFORMATION (§ 8)

The bill establishes standards for determining whether information provided in an electronic record is equivalent to information provided in writing. These standards may not be varied by agreement.

A law that requires information to be provided, sent, or delivered in writing to another person is satisfied if it is provided, sent, or delivered in an electronic record that the recipient can retain upon receipt. If the sender or the electronic system he uses to send it inhibits the recipient's ability to print or store an electronic record, it is not considered retained under the bill.

If the law specifies the manner in which a record must be posted, displayed, sent, communicated, transmitted, or formatted, the law governs and the information cannot be presented electronically unless the law permits a waiver.

SECURITY PROCEDURES (§ 9)

An electronic record or signature is attributable to the person who created it. Creation may be proven in any manner, including a showing of the efficacy of a security procedure. "Security procedure" means a procedure employed to verify that an electronic signature, record, or performance is that of a specific person or to detect changes or errors in the electronic record formation.

The legal effect of the attribution is determined from the context and surrounding circumstances at the time the record or signature was created, executed, or adopted, including the parties' agreement and any other applicable law.

ERRORS AND CHANGES (§ 10)

If a change or error occurs in an electronic record sent between parties to a transaction, the following rules apply:

1. A person may avoid a transaction caused by an inadvertent error if, upon learning of the error, he gives prompt notice of it, does not use or receive a benefit from the transaction, and complies with any instructions for returning or destroying any received consideration.
2. If the parties agreed to use a security procedure to detect changes or errors and only one party conforms, the conforming party may avoid the effect of any error or change if the nonconforming party would have detected it had he conformed.
3. In all other instances the change or error has the effect provided by law, including the law of mistake and the parties' contract.

The rules on error and change cannot be varied by agreement.

NOTORIZATION AND ACKNOWLEDGEMENT (§ 11)

The bill permits a notary and other officers authorized to acknowledge, verify, or take a statement made under oath to act electronically, effectively removing requirements for a stamp or a seal. The notary's or officer's electronic signature, together with all other information required by law, must be attached or logically associated with the electronic record.

RETAINING ELECTRONIC RECORDS (§ 12)

The bill validates electronic records as originals when the law requires retention of the original. Specifically, an electronic record that accurately reproduces information required by law and that is accessible at a later time satisfies legal requirements for a record to be retained, unless a law passed after October 1, 2001 prohibits the use of an electronic record. An electronic record of a check is valid only if the information on the front and back of the check are recorded. The bill does not preclude a state or local governmental agency located in Connecticut from imposing additional retention requirements.

A third party may be used to retain records.

AUTOMATED TRANSACTIONS (§ 14)

The bill allows two or more electronic agents to form a contract even if no individual is aware of or reviews the agents' actions or the resulting

terms and agreements. In such contracts, the principal is bound by the contract his agent makes. Contracts can also be formed when individuals perform acts with electronic agents that they know will cause the agent to complete a transaction or performance. For example, articles purchased from a website by a click of a button obligates the person who clicked the button to purchase the product if he knew that his actions would complete the sale. Applicable law determines the contract's terms.

TIME AND PLACE OF SENDING AND RECEIPT (§ 15)

The bill establishes default rules regarding when and from where an electronic record is sent and received. It does not address what happens when a record is unintelligible or unusable by a recipient. The effectiveness of an illegible record and whether it binds any party are left to other law.

Unless otherwise agreed, an electronic record is sent when it:

1. is properly addressed or otherwise properly directed to an information processing system (a) that the recipient has designated or uses to receive electronic records of the type sent and (b) where the recipient can retrieve the electronic record,
2. is in a form that the system can process, and
3. enters a system outside of the sender's control or enters a region of the system the recipient controls and designates or uses.

Unless otherwise agreed, an electronic record is received when:

1. it enters a system the recipient has designated or uses to receive electronic records of the type sent and from which he can retrieve the record, and
2. it is in a form capable of being processed by that system.

The record is received even if no one is aware of its arrival. An acknowledgement of receipt sent by an information processing system establishes that a record was received but, by itself, does not establish that the contents sent correspond to those received.

Unless otherwise expressly provided, an electronic record is deemed sent from and received at the parties' place of business. If they have more than one place of business, the business with the closest relationship to the transaction is considered as the place of business. If the parties do not have a place of business, their residence substitutes as the place of business. A record is received even if the information processing center that received it is not located at the recipient's place of business.

TRANSFERABLE RECORDS (§ 16)

The bill allows for the creation of a system for transferring negotiable instruments and documents in electronic form in the same way that their paper equivalents are transferred.

The provision is limited to notes and documents that (1) are recognized as negotiable instruments and documents under the state's UCC or other similar law if the notes and documents were in writing and (2) the issuer has expressly agreed are transferable records.

The bill considers a person to have control of a transferable record in electronic form ("the holder") if a system reliably establishes his ownership. The holder has the same rights and defenses as a holder of a note or document under the state's UCC or other similar law, including those of a holder in due course where applicable.

A system establishes that a person is the holder if the record was created, stored, and assigned so that:

1. a single, unique, identifiable, authoritative copy exists;
2. the copy identifies the person asserting control as the person to whom the record was issued or the most recent transferee;
3. the copy is communicated to and maintained by the person asserting control or his custodian;
4. the person asserting control must consent to copies or revisions that add or change the name of an identified assignee;
5. copies of the authoritative copy are readily identifiable; and

6. revisions to the authoritative copy are readily identifiable as authorized or unauthorized.

The bill requires the holder to provide reasonable proof that he is in control of the transferable record if the obligor (person who must honor it) requests it. The proof may include access to the authoritative copy of the record and related business records that show the record's terms and that establish the identity of the person asserting control. Unless otherwise agreed, an obligor has the same rights and defenses as an equivalent obligor for equivalent records or writings under the UCC or other similar law.

CONSUMER PROTECTIONS (§§ 19 and 20)

The bill protects consumers by providing that:

1. they can exercise or preserve their legal rights in the same manner that they were notified of such rights;
2. in a consumer transaction, an electronic record is not sent to or received by a consumer if the sender knows that the consumer did not actually receive it or that he received it but could not open or read it;
3. consumer electronic transactions are entered into at the consumer's place of residence, meaning any legal action pertaining to the transaction involving a Connecticut consumer could be brought in Connecticut unless a contract provides otherwise; and
4. information required by law to be provided or made available to a consumer in writing can be satisfied by an electronic record that conveys the information only if the requirements of the federal Electronic Signatures in Global and National Commerce Act's (E-SIGN) provisions on consumer disclosures are met.

The bill prohibits parties to a consumer transaction from varying the requirement to comply with federal law by agreement. It also prohibits these consumer protections from being waived or varied by agreement. "Consumer" has the same meaning as it does under E-SIGN (i.e., a person who transacts to get personal, family, or household products or services or his legal representative).

GOVERNMENT RECORDS (§§ 17 and 18)

The bill does not require a state or local government agency or entity to use or permit the use of electronic records or signatures. But if such an agency decides to use or allow them, it must determine whether, and to what extent, it will: (1) create and retain electronic records, (2) convert written records to electronic records, (3) send and accept electronic records and signatures, and (4) communicate and use and rely upon electronic records and signatures. A law passed after October 1, 2001 that prohibits the use of electronic records for evidentiary, audit, or like purposes will prevent a governmental agency from retaining them in electronic form.

If a state executive branch governmental agency uses electronic records and signatures, the bill authorizes the Department of Information Technology (DOIT), after considering security, to adopt regulations specifying:

1. how the electronic records will be created, generated, sent, communicated, received, and stored and the systems established for this purpose;
2. acceptable types of electronic signatures, the manner and format for affixing the signature to the record, how to identify any third party assisting someone to file an electronic record, and any criteria the third party must meet;
3. how the records will be preserved, disposed of, and secured and how their integrity, confidentiality and auditability will be maintained; and
4. any other requirements concerning nonelectronic records that are applicable to electronic records.

Regulations

DOIT's regulations regarding electronic records may encourage and promote consistency and interoperability with similar regulatory requirements adopted by other states, the federal government, and nongovernmental entities and people interacting with state agencies.

The regulations may allow state agencies to choose, from differing

standard levels, the most appropriate for a particular application.

DOIT's regulations do not apply to the offices of the state treasurer, comptroller, attorney general, or the secretary of the state. These offices may each adopt regulations to carry out the purposes of the regulations adopted by DOIT as they pertain to each office.

SEVERABILITY (§ 21)

The bill includes a severability clause, which allows each of its provisions to be given legal effect irrespective of other provisions. If any of its provisions are held invalid or inconsistent with E-SIGN, the invalidity or inconsistency does not alter the affect of its other provisions.

E-SIGN AS IT RELATES TO CUETA (§ 22)

The bill states that its provisions on the effectiveness, validity, and enforceability of electronic records and signatures and related contracts conform to the requirements of E-SIGN, which allows states to supercede, modify, or limit its electronic contracting provisions (see BACKGROUND).

BACKGROUND

States That Have Adopted UETA

Arizona, California, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Nebraska, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Utah, and Virginia have all adopted UETA in some form.

National Conference of Commissioners on Uniform State Laws

NCCUSL is a nonprofit, unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners appointed. Most jurisdictions provide for their commission by statute. NCCUSL promotes the passage of uniform state laws.

Electronic Records and Signatures Act of 1999 Repealed by the Bill

This act permits state agencies to electronically create, use, distribute, and maintain governmental records, other than wills, codicils, and land conveyances. It also permits them to (1) receive electronic records, and (2) allow these records to be signed with an electronic signature. An "electronic signature" means a signature in electronic form attached to or logically associated with an electronic record.

It permits the DOIT's chief information officer, in consultation with the Office of Policy and Management secretary, to adopt regulations applicable to all executive branch state agencies on the creation, use, distribution, and maintenance of electronic records.

The executive-branch regulations adopted by the chief information officer do not apply to offices of the state treasurer, comptroller, secretary of the state, and attorney general. These offices may adopt their own regulations. Additionally, all state agencies may adopt regulations regarding electronic records that: (1) address the adopting agency's needs and circumstances, (2) carry out the purpose of the executive-branch regulations adopted by the chief information officer, and (3) are consistent with the executive-branch regulations.

E-SIGN

Congress passed and the president approved it on June 30, 2000. It became effective on October 1, 2000. Like CUETA, E-SIGN validates the use of electronic records and signatures. While the two overlap significantly, they are not identical. For example, E-SIGN applies only to interstate transactions, not intrastate transactions.

Where E-SIGN and any state law address the same aspects of interstate and foreign commerce, Section 102 of E-SIGN states that federal law preempts state law. However, E-SIGN has a reverse preemption provision that allows states to modify, limit, or supersede its electronic contracting provisions when a state adopts:

1. UETA; or
2. alternative procedures or requirements for the use or acceptance of electronic records or electronic signatures, if the alternative procedures or requirements (a) are consistent with the federal act, (b) do not require or accord greater legal status or effect to a

specific technology, or (c) make specific reference to the federal act (Pub. Law 106-229, 114 Stat. 464 (2000), codified at 15 USC §§ 7001 to 7006, 7021, and 7031).

Holder

A “holder” is a person who has legal possession of a negotiable instrument or document.

Holder in Due Course

A “holder in due course” is a person who, in good faith, gave value for a negotiable instrument or document without notice that it was overdue or had been dishonored or that there were any defenses or claims to it. The holder in due course takes the instrument or document free of all claims and personal defenses.

Legislative History

On March 9 and April 19, the House referred the bill (File 15) to the Judiciary and Legislative Management committees, respectively. Both committees reported it without change, Judiciary on April 5 and Legislative Management on April 25.

COMMITTEE ACTION**Government Administration and Elections Committee**

Joint Favorable Substitute

Yea 17 Nay 0

Judiciary Committee

Joint Favorable Report

Yea 38 Nay 0

Joint Committee on Legislative Management

Joint Favorable Report

Yea 26 Nay 0